

## **BEFORE THE WEST VIRGINIA BOARD OF MEDICINE**

**IN RE: ROBERT ALBERT HESS, M.D.**

### **CONSENT ORDER**

The West Virginia Board of Medicine ("Board") and Robert Albert Hess, M.D. ("Dr. Hess"), freely and voluntarily enter into the following Consent Order pursuant to the provisions of W. Va. Code § 30-3-14, *et seq.*:

### **FINDINGS OF FACT**

1. Dr. Hess currently holds a license to practice medicine and surgery in the State of West Virginia, License No. 14997, issued originally in 1987. Dr. Hess' address of record is in Huntington, West Virginia.

2. In January, 2009, Dr. Hess was the subject of a random audit by the Board to determine whether he had completed the required minimum number of fifty (50) hours of Continuing Medical Education ("CME") coursework, as described in 11 CSR 6 2.2, including two (2) hours in the subject of end-of-life care and pain management, as described in W. Va. Code § 30-1-7a, during the licensure period from July 1, 2006, to June 30, 2008.

3. In Dr. Hess' licensure renewal application for the period from July 1, 2008, to June 30, 2010, submitted to the Board and dated June 6, 2008, Dr. Hess represented that he had completed the required minimum number of fifty (50) hours of CME coursework, including two (2) hours of CME coursework in the subject of end-of-life care and pain management, during the preceding licensure period from July 1, 2006, to June 30, 2008.

4. The random audit revealed that Dr. Hess had completed at least fifty (50) hours of approved CME coursework during the preceding licensure period from July 1, 2006, to June 30, 2008, but had failed to complete two (2) hours of CME coursework in the subject of end-of-life care, including pain management.

5. In March 2009, the Complaint Committee of the Board initiated a complaint against Dr. Hess based upon his apparent deficiency of two (2) hours of CME in the subject of end-of-life care, including pain management, and his certification that he had completed the same during the preceding licensure period from July 1, 2006, to June 30, 2008.

6. Dr. Hess, by letter to the Board dated April 1, 2009, and received by the Board on June 18, 2009, indicated that he mistakenly believed a CME course he completed met the requirements for the CME coursework in the subject of end-of-life care, including pain management. Upon realization of this error, Dr. Hess indicated that he completed the requirement in February, 2009, through the West Virginia University Health Sciences Office of Continuing Education for Medicine, Nursing, and Dentistry.

### **CONCLUSIONS OF LAW**

1. The Board has a mandate pursuant to the West Virginia Medical Practice Act to protect the public interest. W. Va. Code § 30-3-1.

2. Probable cause may exist to substantiate charges against Dr. Hess pursuant to W. Va. Code § 30-3-14 (c)(17) and 11 CSR 1A 12.1 (e) and (j), relating to unprofessional conduct, and W. Va. Code § 30-3-14 (c)(1) and (17), 11 CSR 1A 12.1 (a), and 11 CSR 6 4.2 and 4.4, relating to the renewal of a license to practice medicine and surgery by making an incorrect statement in connection with a licensure application.

3. The Board has determined that it is appropriate and in the public interest to waive the commencement of proceedings against Dr. Hess and to proceed without the filing of formal charges in a Complaint and Notice of Hearing, provided Dr. Hess complies with the terms and conditions set forth herein.

### **CONSENT**

Robert Albert Hess, M.D., by affixing his signature hereon, agrees solely and exclusively for purposes of this agreement and the entry of the Order provided for and stated herein, and the proceedings conducted in accordance with this Order, to the following:

1. Dr. Hess acknowledges that he is fully aware that, without his consent here given, no permanent legal action may be taken against him except after a hearing held in accordance with W. Va. Code § 30-3-14 (h) and W. Va. Code § 29A-5-1, *et seq.*

2. Dr. Hess further acknowledges that he has the following rights, among others: the right to a formal hearing before the West Virginia Board of Medicine, the right to reasonable notice of said hearing, the right to be represented by counsel at his own expense, and the right to cross-examine witnesses against him.

3. Dr. Hess waives all rights to such a hearing.

4. Dr. Hess consents to the entry of this Order relative to his practice of medicine and surgery in the State of West Virginia.

5. Dr. Hess understands that this Order is considered public information.

## **ORDER**

**WHEREFORE**, on the basis of the foregoing Findings of Fact and Conclusions of Law of the Board, and on the basis of the consent of Dr. Hess, the West Virginia Board of Medicine hereby **ORDERS** as follows:

1. The CME credits submitted by Dr. Hess on June 18, 2009, shall be applied to meet the fifty (50) hours required for the renewal period July 1, 2006, to June 30, 2008, and shall not be applied or transferred to any subsequent renewal period. However, by completing this CME, Dr. Hess will be deemed to have met the one-time requirement for completion of CME coursework in the subject of end-of-life care, including pain management.

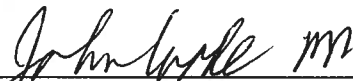
2. Dr. Hess shall also pay a **CIVIL FINE** in the amount of \$100.00 per credit hour for his prior deficiency of two (2) hours of CME in the subject of end-of-life care, including pain management, for the licensure renewal period from July 1, 2006, to June 30, 2008, together with a one-time **ADMINISTRATIVE FEE** in the amount of \$100.00, for a total of **\$300.00**, which fine and administrative fee shall be received by the Board on or before August 15, 2009.

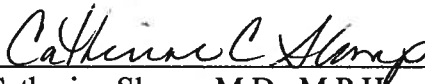
3. In the event that Dr. Hess fails to comply with the requirement stated in the preceding paragraph of this Order, his license to practice medicine in the State of West Virginia shall be **SUSPENDED**, effective immediately, without further process or hearing, pending his successful completion of this requirement, as agreed to by him, and as required by this Order.

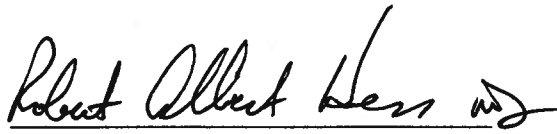
4. Upon the Board's determination that Dr. Hess is in full compliance with the terms and conditions of this Consent Order, the Complaint against him shall be dismissed immediately.

The foregoing Order was entered this 5th day of August, 2009.

WEST VIRGINIA BOARD OF MEDICINE

  
\_\_\_\_\_  
John A. Wade, Jr., M.D.  
President

  
\_\_\_\_\_  
Catherine Slomp, M.D., M.P.H.  
Secretary

  
\_\_\_\_\_  
Robert Albert Hess, M.D.

Date: 7/27/09

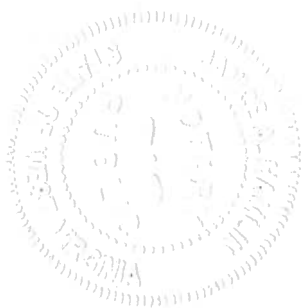
STATE OF West Virginia

COUNTY OF Cabell

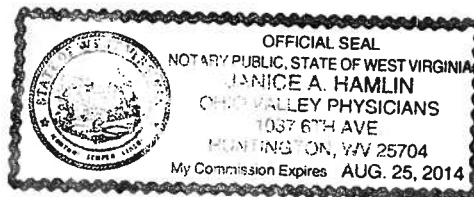
I, Janice A. Hamlin, a Notary Public in and for said county and state do hereby certify that Robert Albert Hess, M.D., whose name is signed on the previous page, has this day acknowledged the same before me.

Given under my hand this 27 day of July, 2009.

My commission expires Aug 25 2014.



Janice A. Hamlin  
Notary Public





# State of West Virginia *Board of Medicine*

JOHN A. WADE, JR., MD  
PRESIDENT

CATHERINE SLEMP, MD, MPH  
SECRETARY

101 Dee Drive, Suite 103  
Charleston, WV 25311  
Telephone 304.558.2921  
Fax 304.558.2084  
[www.wvdhhr.org/wvbom](http://www.wvdhhr.org/wvbom)

J. DAVID LYNCH, JR., MD  
VICE PRESIDENT

ROBERT C. KNITTLE  
EXECUTIVE DIRECTOR

August 5, 2009

Robert Albert Hess, M.D.  
144 Stamford Park Drive  
Huntington, West Virginia 25705

IN RE: Robert Albert Hess, M.D.

Dear Dr. Hess:

Enclosed please find a copy of the fully executed "Consent Order" in the above-referenced matter.

We are in receipt of your documentation of the two (2) remaining hours of continuing medical education and your check in the amount of \$300, both as referenced in the "Consent Order." Consequently, you are in compliance with the terms and conditions of this "Consent Order," and the Complaint against you has been dismissed.

Please note that the continuing medical education submitted shall not be applicable or transferable to any subsequent renewal period. However, by completing this continuing medical education, you have now met the one (1) time requirement for completion of this particular coursework.

In accordance with the statute, the "Consent Order" will remain a permanent part of your historical record maintained by the Board. A copy of this letter will be attached to the "Consent Order" and will remain a part of the "Consent Order."

Thank you for your cooperation and patience throughout this process and continued best wishes for success.

Sincerely,

Robert C. Knittle

RCK/eb

Enclosure